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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re N.P. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

E071430

(Super.Ct.No. RIJ119871)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton,
Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and
Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, T.B. (Mother), appeals from orders terminating parental rights and placing her three youngest children, N.P., I.P., and J.B., for adoption. (Welf. & Inst. Code, § 366.26.)¹ The orders were made on October 3, 2018, when N.P. was age three, I.P. was nearly three, and J.B. was 20 months old. In challenging the orders, Mother claims only that the juvenile court erroneously failed to apply the parental benefit exception to the statutory preference for adoption. (§ 366.26, subd. (c)(1)(B)(i).) We reject this claim and affirm the orders.

II. FACTS AND PROCEDURE

A. Mother's Prior History with Plaintiff and Respondent, Riverside County Department of Public Social Services (DPSS)

Mother has a lengthy history with DPSS. In 2012, Mother's reunification services for her three older children were terminated, and these children were placed in a legal guardianship with a maternal aunt. Mother has a history of depression, anxiety, and substance abuse. On three occasions between 2009 and 2012, Mother was hospitalized pursuant to section 5150, and in 2010, Mother was diagnosed with bipolar disorder. In 2014, Mother admitted her services for her three older children had been terminated because she was using drugs.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

B. The Initial Proceedings for N.P. (July 2014-April 2015)

Mother and N.P. tested positive for opiates when N.P. was born in July 2014. Mother explained that her doctor had prescribed Tylenol with codeine for her headaches during her pregnancy with N.P. Mother admitted she had a history of depression and anxiety but claimed she was currently stable, no longer abused controlled substances, and had last used methamphetamine three years earlier. Mother said her previous mental health problems had all been “methamphetamine induced,” and she was enrolled in the ANKA Behavioral Health Program (ANKA) to address her mental health issues. Through the ANKA program, she was receiving housing assistance, group therapy, and outpatient services. She lived alone and had “appropriate provisions” for N.P. N.P.’s father was involved with N.P., but Mother denied any domestic violence between herself and N.P.’s father.

N.P. was released to Mother directly from the hospital after DPSS placed him on a brief “hold” in order to investigate Mother’s history and to assess N.P.’s safety in Mother’s care. In September 2014, N.P. was adjudged a dependent based on jurisdictional findings that he was at risk of harm due to Mother’s substance abuse history and mental health concerns, Mother’s failure to reunify with her three older children, and the drug-related criminal history of N.P.’s father. (§ 300, subd. (b).) N.P. was placed with Mother pursuant to a family maintenance plan. In April 2015, N.P.’s dependency was terminated and Mother was granted sole legal and physical custody of N.P.

C. N.P.'s Removal from Mother's Care (August 2015-October 2015)

In August 2015, DPSS received a report that Mother was using methamphetamine and, while under the influence of the drug, had driven a car with N.P. and her three older children as passengers. Mother's older children were then ages four, five, and eight. Mother was expecting another child by November or December 2015, and N.P.'s father was also the father of Mother's unborn child. Mother and N.P. were living in a motel, waiting for further housing assistance.

Mother admitted being diagnosed with bipolar disorder, but she was not taking medication for it because she believed she did not need it. She also denied recent methamphetamine use, but then she admitted using the drug after testing positive for it. She apologized "profusely" for being dishonest about her recent methamphetamine use and said she did not believe the drug was still in her system. She explained she was upset with N.P.'s father and used the drug with people in the motel after talking to them about the father. She complained that the father had reported her to DPSS. She said the father wanted custody of N.P. and that law enforcement officers had been to the motel three or four times since July 2015 due to arguments between herself and the father.

DPSS took N.P. into protective custody and placed him in foster care. Mother later admitted using "meth" once in June 2015 and once in August 2015, but she claimed N.P. was with his father when she did so. She said she relapsed due to her "bad" relationship with N.P.'s father and because she was not attending Narcotics Anonymous/Alcoholics Anonymous (NA/AA) meetings or going to church. She said

N.P.'s father would "get violent" and once slapped her face and kicked in her hotel room door. In October 2015, N.P. was again adjudged a dependent based on Mother's substance abuse history, mental health concerns, and based on sustained allegations against N.P.'s father. N.P. was removed from parental custody, and both parents were granted reunification services and supervised visitation for N.P.

D. The Initial Proceedings for I.P. (November 2015-February 2016)

DPSS filed a section 300 petition for I.P. shortly after he was born in November 2015. I.P. was born drug-free and, like N.P., was not initially detained from Mother following his birth. On February 3, 2016, I.P. was adjudged a dependent based on Mother's unresolved mental health issues, his parents' open dependency case with N.P., and his father's failure to participate in services for N.P. (§ 300, subds. (b), (j).) Like N.P., I.P. was initially placed with Mother pursuant to a family maintenance plan.

At the time of his birth, Mother had suitable housing for I.P. (as she initially had for N.P.) and I.P. appeared to be thriving in Mother's care. Between August 2015 and early February 2016, Mother completed an inpatient drug treatment program, consistently tested negative for drugs, and was making progress in her services—including counseling for domestic violence and classes for parenting, anger management, and self-esteem. I.P.'s father was denied services for I.P. but was granted monthly visits, to be supervised at DPSS offices.

E. I.P.'s Detention Outside Mother's Care (March 2016)

In March 2016, DPSS filed a subsequent petition for I.P. (§ 342), seeking to detain I.P. from Mother because she had been allowing I.P.'s father "frequent and liberal access" to I.P., even though she knew or reasonably should have known that the father abused controlled substances, had unresolved anger issues, and engaged in domestic violence with Mother, placing I.P. at risk.

DPSS reported that, on February 10, 2016, a social worker made an unannounced visit to Mother's home in order to confront her about allowing the father unsupervised access to I.P. Mother initially denied that the father had been in her home, but then she admitted she had allowed the father to be in her home and said she felt it was appropriate to allow the father to see I.P. under her supervision. When reminded that only DPSS was authorized to supervise the father's visits, Mother called the father and told him he needed to contact DPSS.

The father met with the social worker on February 29, 2016, and submitted to a saliva drug test, which was positive for cocaine. The father was "combative and uncooperative" with the social worker, and said he would "watch [I.P.] and be around him whenever [he saw] fit." The father also implied that Mother allowed him to care for I.P. while she ran errands or participated in services. The father had not been participating in reunification services for N.P. and, as noted, the father had been denied reunification services for I.P.

On March 10, 2016, the court detained I.P. in DPSS custody but authorized DPSS to return I.P. to Mother's care pursuant to a family maintenance plan. I.P. was placed in foster care with N.P. The court issued a temporary restraining order against the father. The court also noted that the father had an extensive criminal history involving not only possession of controlled substances but adult convictions for burglary, robbery, assault with a firearm, criminal threats, and parole violations.

F. Further Developments in N.P.'s and I.P.'s Cases (April 2016-December 2016)

By early April 2016, Mother had successfully completed her domestic violence counseling and continued to test negative for drugs. She was still receiving mental health counseling and other services through ANKA. She had also been consistently visiting I.P. and N.P.; she was "very attentive" and "patient" and interacted appropriately with them.

On April 4 to 7, 2016, Mother was hospitalized after returning from a March 23 to April 4 trip to Las Vegas to visit her niece. Mother said she went to Las Vegas to "get away from it all, the drama, and the loneliness," and also to get away from the father of I.P. and N.P. Mother denied using drugs in Las Vegas, but said that after she returned home from Las Vegas on April 4, she drank alcohol with a friend, became heavily intoxicated, and the friend called an ambulance. Paramedics took Mother to a hospital, where she was placed on a 72-hour hold. (§ 5150.) Due to her hospitalization, Mother missed an April 7 review hearing for N.P. On April 4, just after Mother returned home

from Las Vegas and just before Mother began drinking with her friend, the father came to Mother's apartment and "physically beat her up."

When interviewed on April 28, Mother said she had last used methamphetamine on April 23 and had relapsed due to I.P. being removed from her care and due to "feeling alone and lonely in her apartment." An April 28 saliva drug test was negative for all substances. Mother stopped attending the MOM'S outpatient program when she went to Las Vegas on April 4, but she was planning to attend an inpatient program. She was continuing to attend NA/AA group meetings, and her apartment was "neat and clean."

In May and June 2016, DPSS filed reports expressing concern that Mother was still engaged in a "violent relationship" with the father and that Mother "continues to relapse and cannot display any behavioral changes despite all of her substance abuse courses, certificate[s] of completion[], active attendance and participation in NA/AA group meetings and over three-years of individual counseling" DPSS stressed that Mother "continues to use poor judgment in her decision making" and "continues to relapse when faced with stressful triggers and is unable to display self-control." On June 8, 2016, Mother was admitted to an inpatient program.

On June 14, 2016, the court sustained the further petition for I.P. (§ 342), and granted Mother reunification services for I.P. and further services for N.P. The court also gave DPSS "full" authority to grant Mother unsupervised visits with I.P. and N.P., including overnight and weekend visits, and to place both children with Mother pursuant

to a family maintenance plan. The court terminated the father's services for N.P., denied the father services for I.P., and issued a three-year restraining order against the father, which was not to expire until June 14, 2019.

Also on June 14, 2016, Mother left her inpatient program after only one week of attendance. On August 4, Mother enrolled in a 45-day inpatient program and completed it on September 18. Around this time, Mother also completed a domestic violence program and counseling, and was awarded certificates for self-esteem, relapse prevention, anger management, and parenting education. Mother continued to participate in NA/AA meetings.

In September 2016, DPSS reported that Mother was five months pregnant with J.B., her sixth child and her third with the father of N.P. and I.P. Meanwhile, N.P. and I.P. were thriving in their foster home. On October 6, the court granted the foster parents de facto parent status. On October 20, the foster mother reported that two-year-old N.P.'s visits with Mother were stressful to the child; N.P. cried and ran to the foster mother following the visits. The foster parents were willing to adopt N.P., I.P., and Mother's unborn child, J.B. But through November 2016, Mother continued to have supervised visits with N.P. and I.P. And in December 2016, Mother completed her case plans and began having unsupervised visits.

G. The Initial Proceedings for J.B. (February 2017)

J.B. was born in February 2017, drug-free and with no health concerns, but DPSS promptly filed a section 300 petition for J.B. based on the parents' histories and the open dependency cases for N.P. and I.P. J.B. was left in Mother's care pursuant to a family maintenance plan. By this time, Mother was having overnight and weekend visits with N.P. and I.P.

In February 2017, after J.B. was born, Mother admitting using methamphetamine in November 2016 while pregnant with J.B. Still, on March 1, 2017, the court returned N.P. and I.P. to Mother pursuant to a family maintenance plan. J.B. was adjudicated a dependent in June 2017, and all three children were continued in Mother's care. J.B.'s father was denied reunification services for J.B.

H. The Removal of the Children from Mother's Care (August 2017)

On June 7, 2017, DPSS received a general neglect referral alleging that N.P. and I.P., who were then between the ages of one and three, were found "wandering away" from Mother's apartment complex, alone and unsupervised, and playing next to a busy street. Mother's apartment door was "wide open" and Mother was asleep on her living room couch. This was the second time this had occurred.

On June 13, DPSS made an unannounced visit to Mother's apartment. Mother was asleep because she had worked a night shift at her new warehouse job, and her mother (the maternal grandmother) was watching all six of Mother's children in the

apartment. All of the children were dressed appropriately, and DPSS closed the referral with the understanding that the apartment maintenance office would install a safety lock on Mother's door.

A month later, on July 13, a second DPSS referral alleged that N.P. was outside Mother's apartment, unsupervised and "running around in the street again." A social worker went to Mother's apartment, found it was "a mess," and Mother admitted "feeling overwhelmed" with all three children in her care. Mother said she was "very tired all of the time" from working at her new job, and she was "unable to cope with work, her mental issues, all three children, her mother, money issues" Mother admitted relapsing by drinking alcohol and by taking a friend's anxiety medication, and she was not participating in her mental health services. Mother failed to produce saliva for an on-demand drug test on July 13, and she also failed to show up for drug tests at another location on July 13 and 18.

At Mother's apartment complex on July 13, the social worker "bumped into" the father. Mother admitted she had been allowing the father to use her car and to come around her and her children; she contacted him "after her surgery because she needed his assistance." Mother claimed she "did not know how to ask for help." Mother was in the process of being evicted from her apartment by September 1, 2017.

On July 20, Mother admitted she would have a positive drug test if she tested that day. At a July 31 team decision meeting, Mother said she had relapsed by "abusing meth and drinking alcohol." She had also asked the father to "help with the children," even

though the maternal grandmother cared for the children while she worked. Mother's drug tests on July 31 and August 2 were positive for methamphetamine and amphetamines.

On August 2, DPSS filed a supplemental petition, seeking the children's removal from Mother's care. (§ 387.) The next day, the children were ordered detained from Mother and were placed in foster care. Mother was granted twice weekly, supervised visits provided she drug tested before each visit. On September 11, Mother enrolled in another inpatient treatment program—her third since 2015. Mother did not visit the children until September 19.

On September 28, the court sustained the supplemental petition by finding the children were at risk because (1) the previous disposition (family maintenance) had not been effective in protecting them, (2) Mother continued to abuse controlled substances, and (3) Mother had not participated in mental health services or on-demand drug tests. At disposition, the children were ordered removed from Mother's care, Mother was denied reunification services, and Mother's supervised visits were reduced to twice monthly at DPSS offices. A section 366.26 hearing was set for January 25, 2018, but the hearing was continued and held on October 3, 2018.

I. Further Developments Following the Children's Removal from Mother's Care

In December 2017, Mother enrolled in another inpatient treatment program. But in January 2018, Mother was homeless, was not taking drug tests, and had visited the children only twice since August 3, 2017. In January and again in May 2018, Mother

filed section 388 petitions seeking the return of the children or reunification services, but Mother withdrew the petitions on June 5, 2018.

In April 2018, Mother found a two-bedroom, one bath apartment through the HOPE Housing Program, and the maternal grandmother lived with Mother and relied on Mother for housing. In July 2018, DPSS reported that Mother was pregnant with her seventh child, and the child was due in September 2018. In May 2018, Mother said she was “‘90% sure’” that the father of N.P., I.P., and J.B. was the father of her seventh child. But in her January 2018 section 388 petition, Mother averred she was “‘out of the father’s life.’” Through 2018, the father was not in contact with DPSS and his whereabouts were unknown.

The three children were placed in a prospective adoptive home in April 2018, and by June 2018 they were thriving in the home. Mother had five visits between March and June 2018. The quality of the visits was “‘appropriate’” and the children “‘seemed happy.’” But the children were no longer “‘closely attached’” to Mother and did not cry or “‘cling’” to Mother when the visits ended. After the children returned home from the visits, they did not seem to miss Mother or cry for her. And during visits, Mother was unable to handle all of the children without assistance.

N.P. and I.P. called the prospective adoptive parents “‘mom’” and “‘dad,’” and the parents were willing to adopt all them, along with J.B. and Mother’s unborn child. N.P. and I.P. had developmental delays, including some speech delays, and they were

receiving WRAP services. N.P.'s and I.P.'s behavior had "improved drastically" with the help of their prospective adoptive mother.

In July 2018, DPSS reported Mother had been "stable" for the previous 90 days, but expressed concern that Mother still made "erratic decisions," like becoming pregnant again, had unresolved mental health issues, was unable to handle all of the children, and had been unable to maintain her sobriety or stable housing. DPSS thus recommended that adoption remain the children's permanent plan.

In September 2018, Mother gave birth to her seventh child, and the child was placed in Mother's care.² On September 24, Mother filed a third set of section 388 petitions for reunification services, but the petitions were denied following an October 3, 2018, hearing. The court found Mother's circumstances were changing but not changed, and that granting her services would not serve the children's best interests. (§ 388.) After denying the section 388 petitions, the court conducted a section 366.26 hearing.

J. The Section 366.26 Hearing (October 3, 2018)

At the section 366.26 hearing, Mother's counsel asked the court to apply the parental benefit exception to adoption and place the children in a long-term guardianship. The children's counsel disagreed and argued that "[w]hile there may be some benefit" to the children of continuing their contact with Mother, the children would realize a greater benefit from adoption.

² The record on appeal contains no section 300 petition or reports concerning Mother's seventh child.

The court ruled that the parental benefit exception did not apply. It was undisputed that Mother had been visiting the children twice monthly, as the court had allowed. And in denying Mother's section 388 petitions, the court acknowledged Mother had a "long-standing relationship" with the children.

But the court found that terminating parental rights would not be detrimental to the children, and observed that even though Mother had maintained regular visitation and contact, Mother could not show the children would benefit more from maintaining their relationship with Mother than they would benefit from adoption. The court noted Mother had a "history of starts and stops and failures and [of] constantly putting the children in limbo." Thus, at the conclusion of the hearing, the court terminated parental rights and selected adoption as the children's permanent plans.

III. DISCUSSION

Mother claims the juvenile court erroneously refused to apply the parental benefit exception to the adoption preference for the children. We disagree.

A. *Applicable Legal Principles*

At a section 366.26 hearing, the juvenile court is tasked with selecting and implementing a permanent plan for the child. (*In re K.P.* (2012) 203 Cal.App.4th 614, 620.) Permanent plans include adoption, guardianship, and long-term foster care.³ (*In re*

³ Long-term foster care includes a "planned permanent living arrangement" or "PPLA" which means any "living arrangement other than reunification, adoption, legal guardianship, or placement with a relative." (*A.M. v. Superior Court* (2015) 237 Cal.App.4th 506, 510, fn. 2.)

S.B. (2008) 164 Cal.App.4th 289, 296.) “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Adoption involves terminating the parental rights of the child’s natural parents, but guardianship and long-term foster care leave these parental rights intact. (*Id.* at p. 574.)

If the court finds the child will likely be adopted if parental rights are terminated, the court “shall terminate parental rights” and select adoption as the child’s permanent plan, unless the court finds that one or more statutory exceptions to the adoption preference applies. (*In re K.P.*, *supra*, 203 Cal.App.4th at p. 620; § 366.26, subd. (c)(1)(A)-(B).) A parent has the burden of showing that an exception applies. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) The parental benefit exception applies if two conditions are shown: (1) the parent has “maintained regular visitation and contact with the child”; and (2) “the child would benefit from continuing the relationship” with the parent. (§ 366.26, subd. (c)(1)(B)(i); *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) In order to apply the parental benefit exception, the court must find “a compelling reason” for determining that terminating parental rights would be detrimental to the child due to these two circumstances. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

In order to show the child would benefit from continuing the relationship with the parent, the parent “must do more than demonstrate . . . an emotional bond with the child”; the parent “must show that he or she occupies a ‘parental role’ in the child’s life.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must also show that the parent-child relationship “promotes the well-being of the child to such a degree as to outweigh

the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“The balancing of [these] competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the “positive” or “negative” effect of interaction between parent and child, and the child's particular needs. [Citation.] When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.’ [Citation.]” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349-1350.)

B. *Standards of Review*

“We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination [of parental rights] would be detrimental to the child. [Citations.]” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300-1301.)

Whether there is a beneficial parent-child relationship is a factual issue; thus, the substantial evidence standard applies to this component of the court's decision. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) But whether there is a compelling reason to determine the child would suffer detriment if parental rights are terminated is a “‘quintessentially’ discretionary decision,” because it requires the court to “determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption.” (*Id.* at p. 1315.)

C. Analysis

The court found and substantial evidence shows that Mother met the first prong of the parental benefit exception. In fact, it was undisputed that Mother “maintained regular visitation and contact” with the children. (§ 366.26, subd. (c)(1)(B)(i).) When Mother was stable, Mother regularly visited the children and her visits were appropriate. But Mother did not meet the second prong of the parental benefit exception: Mother did not *and could not* show that the children would benefit more from maintaining their relationship with Mother than they would benefit from adoption. (*Ibid.*)

The children were very young at the time of the section 366.26 hearing. N.P. was only age three, I.P. was nearly age three, and J.B. was 20 months old. N.P. and I.P. had developmental delays and needed special attention and services to address those delays. All three children needed the stability and permanency that adoption would provide. And

when weighed against the children's needs, the strength and quality of Mother's relationship with the children was poor.

Mother was unable to handle all three children at the same time, both when she had all of the children in her care in 2017 and during her visits in 2018. And despite years of services, Mother continued to make poor choices, and did not have a significant period of sobriety or housing stability. On the other hand, the children were thriving in their prospective adoptive home, and their behavior had "improved drastically" in that home. In addition, the children were no longer attached to Mother. Thus, there was no indication that the children had a substantial, positive emotional attachment to Mother such that the children would be "greatly harmed" if Mother's parental rights were terminated. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; cf. *In re E.T.* (2018) 31 Cal.App.5th 68, 76-77 [court abused discretion in failing to apply parental benefit exception where four-year-old twins had such a substantial and positive relationship with their mother that terminating the relationship could cause the twins great harm].) The court reasonably could have concluded that there was no compelling reason for determining that terminating parental rights would be detrimental to the children.

For all of these reasons, the court did not abuse its discretion in concluding that Mother did not show the children would benefit more from maintaining their relationship with Mother than they would benefit from adoption.

IV. DISPOSITION

The October 3, 2018, orders terminating parental rights to N.P., I.P., and J.B. and selecting adoption as their permanent plans are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

CODRINGTON
Acting P. J.

RAPHAEL
J.